



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 17, 2004

Mr. G. Chadwick Weaver  
First Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR2004-1161

Dear Mr. Weaver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#196309.

The City of Midland (the "city") received a request for a specific offense report. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108 and 552.130 and of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested offense report relates to a pending criminal investigation. Based upon this representation, we conclude that the release of the offense report would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle*

*Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report.

Nevertheless, you argue that certain information about the victim is not subject to disclosure. We note that 552.108 excepts from disclosure the Exhibit B information you have highlighted in green, with the exception of the identification and description of the complainant and the vehicle involved. We advise that, as a general rule, common-law privacy does not protect the identity of a crime victim. *See* Open Records Decision No. 438 at 7 (1986) (stating that identity of a complainant, which generally is public information, may be withheld only in unique circumstances). Such information may be withheld under section 552.101 in conjunction with common-law privacy only upon a showing of certain "special circumstances."<sup>1</sup> *See* Open Records Decision No. 169 (1977). This office considers such "special circumstances" to refer to a very narrow set of situations in which release of the information at issue would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. "Special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* In this case, we find that you have not demonstrated an imminent physical danger that would constitute such "special circumstances." Furthermore, the requestor here is the victim and so the city may not withhold requested information from her based on her privacy interest. *See* Gov't Code § 552.023. Thus, based on our review of the submitted information, we conclude that you may not withhold the identity and description of the victim under section 552.101 of the Government Code in conjunction with the common-law right to privacy. Although section 552.108(a)(1) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

We will now address the applicability of section 552.130 to portions of the information contained in Exhibit B. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

---

<sup>1</sup>Section 552.101 of the Government Code encompasses the doctrine of common-law privacy.

You must withhold the Texas driver's license numbers and license plate number under section 552.130.

Lastly, we address your argument that social security numbers found in Exhibit B are excepted from public disclosure under section 552.101. We note that only one social security number, that of the arrestee, is listed in Exhibit B. Because an arrestee's social security number is considered front page offense report information, we are required to address your section 552.101 claim. *See Houston Chronicle*; Open Records Decision No. 127 (1976). Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* You claim that the social security number at issue falls under the federal Social Security Act because it was obtained pursuant to section 411.086 of the Government Code. That provision contemplates rules that the Department of Public Safety ("DPS") shall adopt in regard to requests for criminal history information. Section 411.086(b)(2) states that such rules "may require a person requesting criminal history information about an individual to submit to [DPS] one or more of the following: . . . (E) any known identifying number of the individual, including social security number . . . ."

While you state that the collection of social security numbers "by police officers helps establish identities of criminals," you do not specifically state whether the department obtained or maintained the social security number at issue in order to request criminal history information from DPS. Moreover, you do not inform us as to whether DPS actually requires or required the department to submit the social security number at issue in order to request criminal history information. We find that if the department obtained or maintains the social security number in order to request criminal history information from DPS, and if DPS actually requires or required the department to submit the social security number with its request for criminal history information, then the social security number is confidential under section 411.086 of the Government Code in conjunction with 552.101 and federal law. However, if this is not in fact the case, this social security number must be released as front page offense report information under 552.108(c).

In summary, with the exception of the front page offense report information, including the identification and description of the complainant, you may withhold the offense report under 552.108(a)(1), as its release would interfere with the detection, investigation, or prosecution of crime. Additionally, while the description of the vehicle involved is considered basic front page offense report information, section 552.130 requires that you withhold the Texas driver's license numbers and license plate number from disclosure. Finally, if the city's police department obtained or maintains the arrestee's social security

number in order to request criminal history information from DPS, and if DPS actually requires or required the department to submit the social security number with its request for criminal history information, then the social security number is confidential under section 411.086 of the Government Code in conjunction with 552.101 and federal law.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cary Grace", with a long horizontal flourish extending to the right.

Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/lmt

Ref: ID#196309

Enc. Submitted documents

c: Ms. Lisa Roberts  
4812 Sunshine Parkway  
Midland, Texas 79707  
(w/o enclosures)